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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,582	07/23/2003	Reiner Bartsch	2701	7748

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STRIKER, STRIKER & STENBY
103 East Neck Road
Huntington, NY 11743

EXAMINER

DEHGHAN, QUEENIE S

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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05/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/625,582

Applicant(s)

BARTSCH, REINER

Examiner

Queenie Dehghan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-16 and 32-46 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 32-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 32, 36, 40-43, and 45 recite said thermal processing including said thermally cutting to length, which does not appear to be explicitly disclosed in the specification. The specification provides only the example of thermally opening the bottom as an example of thermal processing and not the thermally cutting to length.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 32-39 and 41-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 32, 36, 41, 42, 43, and 45 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01.

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The omitted steps are: the linking step between forming a bottom and opening the bottom. It is unclear how a bottom is opened if there is no indication that it is closed. There seems to lack a nexus between the two method steps.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 32-35 and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritt et al. (4,516,998) in view of Bennett et al. (3,985,535). Ritt et al. disclose a method for making small glass containers from hollow glass tube that is clamped in a vertical orientation, wherein the tube has an interior surface, an open upper end and a lower end. Furthermore, Ritt et al. disclose thermally cutting the tube to length, forming a tube piece for discard and a bottom at the lower end of the tube, heating the lower end of the hollow glass tube to thermally open the bottom, forming a mouth of the glass container at the lower end, and melting through the tube at a position corresponding to a height of the small glass container (figure 1, col. 1 lines 10-52). Ritt et al. further disclose the partially closing of the tube at the open upper end by sealing the upper end and creating a dot shaped opening in the upper end. Doing so produces an overpressure during the heating of the lower end, but preventing excessive overpressure in the tube (col. 2 lines 1-9, 40-50). Additionally Ritt et al. disclose

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manufacturing small glass containers, such as ampoules with the steps mentioned above in order to prevent contamination from volatile glass components that are blown into the interior of the glass tube during thermal processing with a jet flame (col. 1 lines 53-59). It would have been obvious to one of ordinary skill in the art at the time of the invention to expect that volatile glass components encompasses evaporated alkali compounds, especially since it is common for a glass preform to contain alkali compounds in its composition.

7. This is further exemplified by Bennett et al. Bennett et al. disclose ampoules that are typically made of an alkali-metal containing glass, such as aluminosilicate (col. 1 lines 60-63). In using the aluminosilicate glass of Bennett et al., Ritt et al. process would reduce the contamination of the alkali compounds resulting from thermal processing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to expect the small glass containers of Ritt et al. to be made of aluminosilicate glass because Bennett et al. has demonstrated that is known in the art to utilize such a glass composition for the making of ampoules and for the strength that aluminosilicate glass provides to the ampoules made.

8. Additionally, as mentioned above, Ritt et al. disclose a partial closing of the tube at the upper end with a through-going opening so that an overpressure is produced by constricting a gas flow path through said open upper end during said thermal processing while keeping said open upper end sufficiently open so that an excessive overpressure that would otherwise damage the glass tube is not produced. Although a stopper is not specifically used as the sealing/constricting means, the same effect is

achieved by the closed off end with an opening as that of a dimensioned stopper with a through-going opening. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize known methods or means, such as a stopper with a through-going opening, as an equivalent means for sealing one end of a tube, while keeping the end sufficiently open so an excessive overpressure is not produced because stoppers with through-going openings are commonly used for sealing up an end of tube.

9. Claims 36-39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritt et al. (4,516,998) in view of Bennett et al. (3,985,535) and Schul (4,010,022). Ritt et al. disclose a method for making small glass containers, such as ampoules, from hollow glass tube that is clamped in a vertical orientation, wherein the tube has an interior surface, an open upper end and a lower end. Furthermore, Ritt et al. disclose thermally cutting the tube to length, forming a tube piece for discard and a bottom at the lower end of the tube, heating the lower end of the hollow glass tube with a jet flame to thermally open the bottom and forming a mouth of the glass container at the lower end and melting through the tube at a position corresponding to a height of the small glass container (figure 1, col. 1 lines 10-52). Ritt et al. also disclose the importance of creating an overpressure in the tube in order to prevent contamination from volatile glass components that are blown into the interior of the glass tube during thermal processing with a jet flame (col. 1 lines 53-59, col. 2 lines 1-9, 40-50). It would have been obvious to one of ordinary skill in the art at the time of the invention to expect that

volatile glass components encompasses evaporated alkali compounds, especially since it is common for a glass preform to contain alkali compounds in its composition.

10. This is further exemplified by Bennett et al. Bennett et al. disclose ampoules that are typically made of an alkali-metal containing glass, such as aluminosilicate (col. 1 lines 60-63). In using the aluminosilicate glass of Bennett et al., Ritt et al. process would reduce the contamination of the alkali compounds resulting from thermal processing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to expect the small glass containers of Ritt et al. to be made of aluminosilicate glass because Bennett et al. has demonstrated that is known in the art to utilize such a glass composition for the making of ampoules and for the strength that aluminosilicate glass provides to the ampoules made.

11. As mentioned above, Ritt et al. disclose the importance of creating an overpressure in the tube in order to prevent contamination from volatile glass components that are blown into the interior of the glass tube during thermal processing. Although Ritt et al. teaches creating an overpressure by sealing one end of the tube with an opening, one of ordinary skill in the art would recognize that there are other ways to accomplish an overpressure in the tube. Schul teaches blowing gas into and through a glass tube being processed in order to create an overpressure in the interior of the tube (col. 2 lines 65-68). Although Schul teaches an overpressure in a tube to accomplish a different goal, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the known method of Schul of blowing gas

into a tube in order to create the overpressure of Ritt et al. in order to prevent contamination of the interior surface.

12. Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritt et al. (4,516,998) in view of Ott et al. (2004/0176237). Ritt et al. disclose a method for making small glass containers from hollow glass tube that is clamped in a vertical orientation, wherein the tube has an interior surface, an open upper end and a lower end. Furthermore, Ritt et al. disclose thermally cutting the tube to length, forming a tube piece for discard and a bottom at the lower end of the tube, heating the lower end of the hollow glass tube to thermally open the bottom, forming a mouth of the glass container at the lower end, and melting through the tube at a position corresponding to a height of the small glass container (figure 1, col. 1 lines 10-52). Ritt et al. further disclose the partially closing of the tube at the open upper end by sealing the upper end and creating a dot shaped opening in the upper end. Doing so produces an overpressure during the heating of the lower end, but preventing excessive overpressure in the tube (col. 2 lines 1-9, 40-50).

13. Additionally Ritt et al. disclose manufacturing small glass containers, such as ampoules with the steps mentioned above in order to prevent contamination from volatile glass components that are blown into the interior of the glass tube during thermal processing with a jet flame (col. 1 lines 53-59). This is further exemplified by Ott et al. Ott et al. disclose a glass composition comprising SiO_2 , 75; B_2O_3 , 10.5; Al_2O_3 , 5; Na_2O , 7; CaO , 1.5; and BaO , <1 , in percent by weight on an oxide basis that is used for the manufacturing of ampoules ([0045], [0057]). It would have been obvious to one

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of ordinary skill in the art at the time of the invention to expect that volatile glass generated during thermal processing of the glass would encompass evaporated alkali compounds, such as sodium borate especially since the glass tube contains oxides of sodium and boron in its composition. In using the glass of Ott et al., Ritt et al. process would reduce the contamination of the alkali compounds resulting from thermal processing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to expect the small glass containers of Ritt et al. to be made of the glass composition of Ott because Ott has demonstrated that is known in the art to utilize such a glass composition for the making of ampoules and for the high chemical resistance that the glass provides to the ampoules made.

14. Additionally, as mentioned above, Ritt et al. disclose a partial closing of the tube at the upper end with a through-going opening so that an overpressure is produced by constricting a gas flow path through said open upper end during said thermal processing while keeping said open upper end sufficiently open so that an excessive overpressure that would otherwise damage the glass tube is not produced. Although a stopper is not specifically used as the sealing/constricting means, the same effect is achieved by the closed off end with an opening as that of a dimensioned stopper with a through-going opening. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to utilize known methods or means, such as a stopper with a through-going opening, as an equivalent means for sealing one end of a tube, while keeping the end sufficiently open so an excessive overpressure is not produced

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because stoppers with through-going openings are commonly used for sealing up an end of tube.

15. Claims 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritt et al. (4,516,998) in view of Ott et al. (2004/0176237) and Schul (4,010,022). Ritt et al. disclose a method for making small glass containers from hollow glass tube that is clamped in a vertical orientation, wherein the tube has an interior surface, an open upper end and a lower end. Furthermore, Ritt et al. disclose thermally cutting the tube to length, forming a tube piece for discard and a bottom at the lower end of the tube, heating the lower end of the hollow glass tube to thermally open the bottom, forming a mouth of the glass container at the lower end, and melting through the tube at a position corresponding to a height of the small glass container (figure 1, col. 1 lines 10-52). Ritt et al. further disclose the partially closing of the tube at the open upper end by sealing the upper end and creating a dot shaped opening in the upper end. Doing so produces an overpressure during the heating of the lower end, but preventing excessive overpressure in the tube (col. 2 lines 1-9, 40-50).

16. Additionally Ritt et al. disclose manufacturing small glass containers, such as ampoules with the steps mentioned above in order to prevent contamination from volatile glass components that are blown into the interior of the glass tube during thermal processing with a jet flame (col. 1 lines 53-59). This is further exemplified by Ott et al. Ott et al. disclose a glass composition comprising SiO_2 , 75; B_2O_3 , 10.5; Al_2O_3 , 5; Na_2O , 7; CaO , 1.5; and BaO , $<<1$, in percent by weight on an oxide basis that is used for the manufacturing of ampoules ([0045], [0057]). It would have been obvious to one

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of ordinary skill in the art at the time of the invention to expect that volatile glass generated during thermal processing of the glass would encompass evaporated alkali compounds, such as sodium borate especially since the glass tube contains oxides of sodium and boron in its composition and also, as disclosed by the applicant that it is known that sodium borate is released during thermal processing. In using the glass of Ott et al., Ritt et al. process would reduce the contamination of the alkali compounds resulting from thermal processing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to expect the small glass containers of Ritt et al. to be made of the glass composition of Ott because Ott has demonstrated that is known in the art to utilize such a glass composition for the making of ampoules and for the high chemical resistance that the glass provides to the ampoules made.

17. As mentioned above, Ritt et al. disclose the importance of creating an overpressure in the tube in order to prevent contamination from volatile glass components that are blown into the interior of the glass tube during thermal processing. Although Ritt et al. teaches creating an overpressure by sealing one end of the tube with an opening, one of ordinary skill in the art would recognize that there are other ways to accomplish an overpressure in the tube. Schul teaches blowing gas into and through a glass tube being processed in order to create an overpressure in the interior of the tube (col. 2 lines 65-68). Although Schul teaches an overpressure in a tube to accomplish a different goal, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the known method of Schul of blowing gas

into a tube in order to create the overpressure of Ritt et al. in order to prevent contamination of the interior surface.

Response to Arguments

18. Applicant's arguments filed February 26, 2008 have been fully considered but they are not persuasive.

19. In regards to the applicant's argument for support for the term thermal processing. The applicant is incorrect in stating that the specification offers explicit support that thermal processing specifically includes cutting to length. Support needs to be explicit. "What would be obvious to one of ordinary skill in the glass arts", as the applicant states is not explicit support.

20. In regards to the applicant's argument with respect to the applicant's claimed invention being better for making bottles than Ritt's, although the method of Ritt's may include additional steps than the claimed invention, the method steps of claimed invention are essentially taught by Ritt. Furthermore, the closing of one end of the tube with a pin hole opening by Ritt has essentially the same effect as a stopper with a through-hole opening. It is obvious to one of ordinary skill in the art to substitute one known way for achieving a overpressure, such as a closed end with a hole, with another known way, such as a stopper with an opening, since they both accomplish the same goal.

21. The applicant argues that the stopper with the hole is present during the cutting to length of the tube. This is not true. In fact the specification only discusses the use of

a stopper for a puncturing step in page 9. The specification does not recite the presence of a stopper for all of method steps of processing the tube.

22. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The applicant argues that new claims 43 and 44 provide for an unexpected better product without any facts or evidence to support the allegation.

23. In regards to Schul, the applicant argues the source of the air is blower air from a blower or fan, the gas of Schul is not blown through an open upper end, is static and produces a large pressure, and Schul does not disclose the functional limitation of reducing alkali. First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., air from a blower or fan) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Second, Schul discloses delivery of a gas through an open end of the tube which is opposite the end where thermal processing is occurring. The application of blowing air through a tube would be similarly applied to the tube of Ritts. Since the tube of Schul is opened ended at both ends and gas is delivered through one end, naturally the gas would flow from the delivery end to the opposite end. There seems to be no indication that the gas is static, as argued by the applicant. Furthermore, in response to applicant's argument that the references fail to show certain

features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the pressure of gas is large and not slight) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Last, the blowing of gas through a tube to create an overpressure would naturally and inherently prevent or reduce contamination.

Therefore, the blowing of a gas through a tube, as taught by Schul would inherently achieve the functional limitation of preventing contamination.

24. In regards to the applicant's arguments regarding Mueller, Mueller was not used in the rejection, therefore the arguments are moot.

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Queenie Dehghan whose telephone number is (571)272-8209. The examiner can normally be reached on Monday through Friday 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven P. Griffin/
Supervisory Patent Examiner, Art
Unit 1791

Q Dehghan